IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 11 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SARABHAI CHEMICALS PVT.LTD.

Versus

COMMISSIONER OF INCOME TAX

Appearance:

1. INCOME TAX REFERENCE No. 11 of 1988
MR KC PATEL for Petitioner No. 1
MR BB NAIK with MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 21/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the

assessee, the following questions have been referred for the opinion of this Court in respect of assessment year 1978-79 :-

"1. Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that appellant was not entitled to claim 'guarantee commission' of Rs.6,33,333/- as deduction while computing its taxable income ?

2. Whether on the facts and in the circumstances of the case, the Tribunal was justified in rejecting the claim of the appellant in relation to investment allowance of Rs.2,69,998/- for the reasons stated by it in paragraph 11 of the order under reference ?"

2. We have heard Mr RK Patel, learned counsel for the applicant-assessee and Mr BB Naik, learned counsel for the revenue.

3. As far as question No. 1 is concerned, the learned counsel for the parties state that the controversy raised herein is concluded in favour of the assessee by the decision of this Court in Income-tax Reference No. 119 of 1988 decided on 5.3.1998 which was between the same parties. The said decision was thereafter also followed in Income-tax Reference No. 150 of 1986 decided on 4.7.2001 which pertained to assessment year 1976-77.

In view of the aforesaid decisions, it is clear that the appellant was entitled to claim guarantee commission as deduction while computing its taxable income. Our answer to question No. 1 is in the negative i.e. in favour of the assessee and against the revenue.

4. Coming to question No. 2, the learned counsel for the parties stated that the controversy raised herein is concluded in favour of the revenue by the decision of this Court in Kalindi Investment P. Ltd. vs. CIT, 213 ITR 207.

Our answer to question No. 2 is in the affirmative i.e. in favour of the revenue and against the assessee.

5. The reference accordingly stands disposed of with

no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-